

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

David Allen Black, #1067536011220,)	
)	
Plaintiff,)	
)	Civil Action No. 4:17-cv-03265-TMC
v.)	
)	ORDER
John F. Marano, IV,)	
)	
)	
Defendant.)	

Plaintiff, a pretrial detainee proceeding *pro se* and *in forma pauperis*, brought this action pursuant to Title 42, United States Code Section 1983. In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02, D.S.C., this matter was referred to a magistrate judge for pretrial handling. On March 12, 2018, mail was returned to the court as undeliverable with the notations “Return to Sender” and “deceased.” (ECF No. 25). On August 14, 2018, the magistrate judge entered an order allowing Defendant ten days to file a Suggestion of Death pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure. (ECF No. 45). Defendant filed the Suggestion of Death the next day (ECF No. 48), and served the same on Plaintiff’s closest relative by mail (ECF No. 48-2). Rule 25(a)(1) of the Federal Rules of Civil Procedure states that

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25(a)(1).

The court finds that more than ninety days have passed since the filing and service of the Suggestion of Death and that no motion has been made for substitution of the party. Accordingly, this case is **DISMISSED without prejudice** pursuant to Fed. R. Civ. P. 25(a)(1).

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

Anderson, South Carolina
December 17, 2018

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.